

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHIL SMART, §
§
Plaintiff, § § Civil Action No. 3:07-CV-1589-D
VS. §
§
RED OAK TEXAS, et al., § §
§
Defendants. §

ORDER

On December 13, 2007 the United States Magistrate Judge filed his findings and recommendation, in which he recommends that the motion to dismiss filed by defendant State of Texas should be granted, the motions for summary judgment filed by defendants Red Oak, Texas and Ellis County, Texas should be denied without prejudice, and plaintiff should be given an opportunity to amend his complaint to state a federal cause of action against these defendants. No party has timely filed objections to the findings and recommendation of the magistrate judge. Instead, on January 2, 2008, plaintiff filed a first amended original complaint. In it, he seeks relief against all three defendants.

After making an independent review of the pleadings, files, and records in this case, and the findings and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct and are therefore adopted. Accordingly, plaintiff's action against the State of Texas is dismissed without prejudice for lack of subject matter jurisdiction by judgment filed today. The magistrate judge otherwise recommends that plaintiff be allowed to file an amended complaint, after which the remaining defendants may move anew for dismissal if plaintiff is unable to cure the pleading defect as it pertains to his claims against the remaining two defendants. The

court notes that plaintiff filed his first amended original complaint on January 2, 2008. Accordingly, the remaining defendants may now move anew to dismiss the amended complaint, provided they have grounds to do so.

SO ORDERED.

January 10, 2008.



SIDNEY A. FITZWATER
CHIEF JUDGE